IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.1068/2001

Vikram Singh S/o Vishan Singh, Resident of
Vindarwada, Police Station Manpur,
District Dausa
...Accused-appellant
Versus
State of Rajasthan through P.P.
...Respondent

Date of Judgment :::: 9th February, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Satyapal Poshwal, Counsel for accused-appellant
Smt. Nirmala Sharma, P.P., for the State
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//Reportable//

By the Court:-

Accused-appellant Vikram Singh S/o Vishan Singh has preferred this appeal under Section 374 (2) Cr.P.C. against the judgment and order dated 11th of September, 2001, passed by the Additional District & Sessions Judge (Fast Track) Bandikui, in Sessions Case No.94/2001, whereby the accused-appellant has been convicted and sentenced under Section 304-B, IPC, to seven years rigorous imprisonment and under Section 498-A, IPC, to one years rigorous imprisonment and a fine of Rs.500/-, in default of payment of fine to

further undergo two months simple imprisonment. Both the sentences were ordered to run concurrently.

The accused-appellant was charged by the trial court for the offence under Sections 498-A and 304-B of the IPC along-with two other co-accused persons, namely, Mannu Singh @ Manusingh and Smt. Ratan Kanwar (uncle and mother of the appellant). The learned trial court, vide impugned judgment and order dated 11.9.2001, acquitted co-accused-persons Mannu Singh @ Manusingh and Smt. Ratan Kanwar, but convicted and sentenced the accused-appellant, as mentioned above.

Exhibit P-1, a written report was lodged by PW-1 Ram Singh, the father of deceased, on 6.9.1998, alleging therein that his daughter Shakuntla @ Guddi was married with accused Vikram Singh on 22.7.1997. After marriage, the accused-persons used to give her beating on account of demand of dowry. They used to demand motorcycle which was not given in the marriage. On 4.5.1998 his two sons had gone to village Vindarwada, who saw accused Vikram Singh, Ratan Kanwar and Mannu Singh giving beating and abusing Shakuntla. They requested to send Shakuntla with them. On 5.9.1998, in the night, they took Shakuntla in unconscious condition, with them for their village.

However, she died at about 5.00 A.M.

After investigation of the case, a challan was filed against three accused-persons, who were charged by the trial court. The accused denied the charge and claimed to be tried. The prosecution examined 13 witnesses and also produced documentary evidence Exhibit P-1 to Exhibit P-15. Thereafter statement of accused-persons were recorded under Section 313 Cr.P.C., wherein they stated that the prosecution evidence is false.

The learned counsel for the appellant, apart from other arguments, contended that the challan was filed against three accused-persons and the trial court also framed charge against all of them. During trial, PW-1 Ram Singh, PW-8 Suraj Singh and PW-12 Randhir Singh, stated that as and when deceased Shakuntla came to their village, she used to tell them that her in-laws commits cruelty on her. All the witnesses stated that all three accused-persons - Vikram Singh, Mannu Singh and Smt. Ratan Kanwar, used to demand dowry and commit cruelty on her and also gave beating on her person. However, the learned trial court, on the basis of same set of evidence acquitted co-accused persons - Mannu Singh and Smt. Ratan

Kanwar, and wrongly convicted the accused-appellant by making a distinction in his case on the basis of Exhibit P-3 and Exhibit P-4, the two letters alleged to have been written by accused Vikram Singh. He contended that Exhibit P-3, the letter, was handed over to Investigating Officer by PW-1 Ram Singh and Exhibit P-4, another letter, alleged to have been received through post. Therefore, it cannot be said that both the letters were written by accused Vikram Singh as the same are not proved and the learned trial court committed an illegality in placing reliance upon both the letters, which are not connected with the accused. He further contended that even if, for the sake of arguments it is assumed, although not admitted, that both the letters (Exhibit P-3 and Exhibit P-4) were written by Vikram Singh, then from the contents of those letters also the offence under Section 304-B, IPC, is not made out, as there is nothing to show any demand of dowry in connection with the marriage. He contended that these letters also reveal that they have been written in the name of Vikram Singh to his father-in-law wherein it was written that his uncle will come to take his wife and they should send her and further that on 30.4.1998 there will be a function of 'Akhand Ramayan Patth' at their place and the concluding ceremony thereof by way of burnt-offerings will

take place on 1st of May, 1998, therefore, they all should come and bring 'Paharawni' (clothes) for all persons of his family as the same are required according to their custom. He has given the details of the persons for whom clothes are required on 1.5.1998. Exhibit P-4, the another letter makes it clear that it was the in-laws of the accused who advised him to live separately from his parents but his parents told him that they have spent Rs.50,000/-, therefore, in case his in-laws want him to live separately then it is for his in-laws to pay the said amount.

The accused, in his statement, recorded under Section 313 Cr.P.C. has denied both the letters and it is also not proved from any other evidence that the said letters were written by accused Vikram Singh. A perusal of the letters also reveal that there was no demand of dowry in connection with marriage, therefore, the said demand cannot be treated as demand of dowry for the purpose of Section 304-B, IPC, and in these circumstance the case of the accused-appellant could not have been distinguished by the trial court from the case of the co-accused and, in these circumstances, he is also entitled to be acquitted.

The learned Public Prosecutor has supported the

judgment of the trial court and contended that there was evidence of demand of dowry against all the accused-persons, which is clear from the statements of PW-1 Ram Singh, PW-8 Suraj Singh and PW-12 Randhir Singh, and the trial court was justified in making a distinction in between the case of the present accused-appellant and two other co-accused persons on the basis of letters Exhibit P-3 and Exhibit P-4. It is contended on behalf of the State that the demand made vide Exhibit P-3 and Exhibit P-4 constitute the demand of dowry within the definition of “dowry” and offence under Section 304-B, IPC, is fully made out and the appeal of the accused-appellant is liable to be dismissed.

I have considered the rival submissions of learned counsel for both the parties and examined the impugned judgment as well as the record of the trial court and also citations referred during the course of arguments.

So far as the finding of the learned trial court on cruelty with deceased is concerned, it is clear from Para 21 of the impugned judgment wherein the trial court has recorded a finding that no cruelty has been committed by co-accused persons Mannu Singh and

Ratan Kanwar. However, it was held that Vikram Singh committed cruelty and inflicted injuries on the person of deceased. The learned trial court thereafter considered as to whether the cruelty was committed in connection with demand of dowry. There is detailed discussion by the trial court in this connection in Para Nos.22 to 25 wherein the statements of PW-1 Ram Singh, PW-8 Suraj Singh and PW-12 Randhir Singh were referred and considered and it was held that from their statements the offence is not made out against co-accused persons but so far as present appellant is concerned the charge is proved in view of the documentary evidence Exhibit P-3 and Exhibit P-4.

The point for determination in the present appeal is as to whether on the basis of Exhibit P-3 and Exhibit P-4, it can be held that there was demand of dowry in connection with the marriage so as to attract the provisions of Section 304-B, IPC, in the facts and circumstances of the present case, and further that the said demand made in those letters can be said to be a demand of dowry for the purpose of proving the charge of offence under Section 304-B, IPC.

In Satvir Singh Vs. State of Punjab – (2001) 8

SCC 633, the Hon'ble Apex Court considered the definition of “dowry” as defined under Section 2 of the Dowry Prohibition Act, 1961, with reference to the offence under Section 304-B of the IPC, and held that it should be any property or valuable security given or agreed to be given in connection with the marriage. Customary gift or payment in connection with birth of child or other ceremonies unrelated to the marriage ceremony, held, do not fall within the ambit of “dowry”. The relevant Para No.21 of the judgment reads as under:-

> “21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is “at any time” after the marriage. The third occasion may appear to be an unending period. But the crucial words are “in connection with the marriage of the said parties”. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of “dowry”. Hence the dowry mentioned in Section 304-B

> should be any property or valuable security given or agreed to be given in connection with the marriage.”

In K. Prema S. Rao Vs. Yadla Srinivasa Rao – (2003) 1 SCC 217, the Hon'ble Apex Court considered the definition of “dowry” in the context of offence under Section 304-B, IPC, along with Section 113-B of the Evidence Act, and held that one of the key ingredients of the offence is that deceased must have been subjected to cruelty and harassment “in connection with the demand for dowry” shortly before her death. Para 16 of the judgment reads as under:-

> “16. The evidence which has been found acceptable by the courts below against Accused 1 is that the cruel treatment and harassment of the deceased by him led her to commit suicide which was a death “otherwise than under normal circumstances”. To attract the provisions of Section 304-B IPC, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty and harassment “in connection with the demand for dowry”. There is no evidence on record to show that the land was demanded as a dowry. It was given by the father to the deceased in marriage ritual as *pasupukumkuma*. The harassment or cruelty meted out to the deceased by the husband after the marriage to force her to

> transfer the land in his name was “not in connection with any demand for dowry”. One of the main ingredients of the offence of “demand of dowry” being absent in this case, the High Court cannot be said to have committed any error in acquitting Accused 1 for offence under Section 304-B IPC.”

In Appasaheb & Another Vs. State of Maharashtra – 2007 (1) Crimes 110 (SC), their Lordships of the Hon'ble Supreme Court considered the similar point in the context of offence under Section 304-B, IPC, with the meaning of “dowry” as defined under Section 2 of the Dowry Prohibition Act, 1961, and held that giving or taking or property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. Para No.9 of the judgment reads as under:-

> “9. Two essential ingredients of Section 304-B IPC, apart from others, are (i) death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and

(ii) woman is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for “dowry”. The explanation appended to sub-section (1) of Section 304-B IPC says that “dowry” shall have the same meaning as in Section 2 of Dowry Prohibition Act, 1961.

> Section 2 of Dowry Prohibition Act reads as under:
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> “2. Definition of “dowry” - In this Act “dowry” means any property or valuable security given or agreed to be given either directly or indirectly -
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> (a) by one party to a marriage to the other party to the marriage; or
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> (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies.

In view of the aforesaid definition of the word “dowry” any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some

> connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd. AIR 1996 SC 3509) AND Chemical and Fibers of India v. Union of India AIR 1997 SC 558). A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC viz. demand for dowry is not established, the conviction of the appellants cannot be sustained."

So far as facts of the present case are concerned, PW-1 Ram Singh, PW-8 Suraj Singh and PW-12 Randhir Singh have stated that there was demand of dowry by all accused-persons, namely, Vikram Singh,

Mannu Singh and Smt. Ratan Kanwar. They stated that as and when Shakuntla happened at their village she used to tell them that these accused-persons harass her for dowry. However, the learned trial court, after appreciating the entire prosecution evidence, recorded a finding that there was no demand of dowry in connection with marriage by the co-accused Mannu Singh @ Manusingh and Smt. Ratan Kanwar and acquitted them of the charge. The said finding of the trial court has not been challenged by the prosecution as there is no appeal against co-accused persons Mannu Singh and Smt. Ratan Kanwar challenging their acquittal order. The case of appellant is not distinguishable with case of Mannu Singh and Smt. Ratan Kanwar on the basis of statement of PW-1, PW-8 and PW-12.

PW-3 Moolsingh is the cousin brother and PW-4 Munshi Singh is the real brother of the deceased, who went to meet deceased Shakuntla. PW-1 Ram Singh has stated that his son Ghanshyam and nephew Moolsingh had gone to meet his daughter Shakuntla at village Vindarwada. PW-3 and PW-4 both were declared hostile by the prosecution during trial. PW-2 Roopsingh, an independent witness in the case, has also been declared hostile during trial. The prosecution has not examined any neighbour of the accused-persons of the

village Vindarwada to show that the accused-persons ever demanded any dowry from the deceased and gave beating on her person. The Investigating Officer Kan Singh, Dy. S.P., has not been examined in the case by the prosecution. All the prosecution witnesses PW-1 to PW-13 were interested in the case, except PW-7 Julmi, but he also does not say a single word about demand of dowry from or their cruelty with deceased. There are material contradictions also in the statements of PW-1 Ram Singh and PW-2 Roop Singh in respect of time of death of the deceased, who died at Village Bhandari itself and not at Vindarwada, the village of accused-persons. Therefore, from the statements of the prosecution witnesses, I am of the view that the finding of the trial court in connection with acquittal of the co-accused persons appears to be justified and there is no additional evidence against accused-appellant except two letters Exhibit P-3 and Exhibit P-4, which are in respect of demand of clothes for the family members of the accused in the function i.e. 'Akhand Ramayan Katha' organized on 30th of April and 1st of May, 1998, and about condition of parents for accused to live separately from them. The letters Exhibit P-3 and Exhibit P-4 do not contain any demand of dowry in connection with the marriage of the accused with the deceased within the definition of

“dowry”, as defined under Section 2 of the Dowry Prohibition Act, which has been considered by the Hon'ble Supreme Court in the above referred three judgments, in detail. Therefore, in my view, the learned trial court has committed serious illegality in convicting the accused-appellant under Section 304-B IPC.

So far as the offence under Section 498-A, IPC is concerned, I find that, looking to the injuries sustained by deceased, the finding of the trial court in this regard is correct and the same is liable to be confirmed.

Consequently, the appeal of the accused-appellant is partly allowed. The conviction and sentence of the accused-appellant passed by the trial court under Section 304-B, IPC, is set aside and his conviction and sentence under Section 498-A, IPC, is maintained. The accused-appellant has already remained in jail for about six years and seven months till now, and, as such, he has already completed the sentence of imprisonment of one year awarded for the offence under Section 498-A IPC, therefore, it is directed that he should be released forthwith, if his custody is not required in any other case.

(Narendra Kumar Jain) J.

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